



May 9, 2006

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Attention: Art Unit 1772

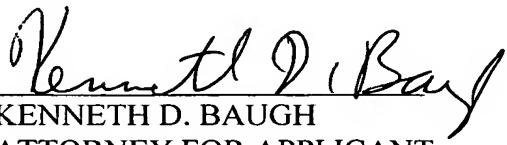
SUBJECT: IN RE APPLICATION OF
 BEVERLY RICHARD
ENTITLED: ANTIBACTERIAL TOILET TISSUE

Serial No. 10/057,346

Filed: January 28, 2002

Sir:

Transmitted herewith is a response to the Notice of Non-Compliant Appeal Brief dated January 9, 2006 in the above referenced application. I hereby certify that this response to the response to the Notice of Non-Compliant Appeal Brief dated January 9, 2006 is being placed with the U.S. Postal Service May 9, 2006 to be delivered by First Class Mail to the Commissioner of Patents P. O. Box 1450, Alexandria, Virginia 22313-1450.


KENNETH D. BAUGH
ATTORNEY FOR APPLICANT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

GROUP ART UNIT 3743 EXAMINER: JOSIAH C. COOKS

In re: Application Subject: ANTIBACTERIAL TOILET PAPER
BEVERLY RICHARD

Serial No. 10/057,346
Filed: January 28. 2002

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REMARKS

In the response to Notification of Non-Compliance of Appeal Brief dated January 9, 2006, please amend the above-identified appeal brief as follows:

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD
OF PATENTS AND APPEALS AND INTERFERENCES

In re Application of:

BEVERLY RICHARD

Serial No.10/057,346

Filed: January 28. 2002

Group Art Unit 1772

Examiner: WILLIAM P. WATKINS III

Appeal No.

COMMISSIONER OF PATENTS

P. O. BOX 1450

ALEXANDRIA, VA. 22313-1450

CORRECTED BRIEF OF APPLICANT
REAL PARTY IN INTEREST

Applicant BEVERLY RICHARD, the real party in interest in the above referenced application, has filed a timely Notice of Appeal from the action of the Primary Examiner in finally rejecting all the claims in the Application. This is an appeal from the final rejection of the Examiner dated November 18, 2004 rejecting claims 1 through 12. The filing fee of \$250.00 was previously submitted.

The application was filed on January 28, 2002 as a new application with 12 claims of which two (2) were independent claims. Claims 1 through 6 were rejected on April 9, 2003 with claims 7 through 12 being inadvertently omitted by the Examiner. All of the claims were rejected on January 2, 2004.

RELATED APPEALS AND INTERFERENCES

This is Applicant's first appeal. There are no prior and pending appeals, judicial proceedings or interferences known to the Applicant which may be related to, directly affect or be affected by or have a bearing on the Boards decision in the pending appeal.

STATUS OF CLAIMS

The status of the claims as set out in the final office action dated November 18,2004 were and are as follows:

allowed claims-none

claims objected to-none

claims rejected- claims 1 through 12.

STATUS OF AMENDMENTS

In Applicant's response dated April 9, 2003 Claims 2, 3, 4, and 6 were amended. In Applicant's response dated January 2, 2004 claims 8, 9, 10, and 12 were amended.

The amendments that were filed on April 9, 2003 and November 18,2004 were entered. No amendment was filed subsequent to the final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

Figures 1 and 2 illustrate the Antibacterial toilet paper of independent claim 1 and claims 2 through 6, which depend from claim 1. These claims are described in the specification on page 4, starting at line 2 through page 5, line 15.

Referring to Figures 1 and 2 and the specification starting on page 4, line 6 there is shown, an antibacterial toilet tissue, generally designated, by the numeral, 10. The tissue 10 includes an upper planar shaped absorbent member, generally designated, by the numeral 12 (Fig 2). The upper planar shaped absorbent member 12 includes a first absorbent member 14. The first absorbent member 14, can be made, for example, of a thin one ply paper like absorbent material which will let liquid substances flow therethrough. (claim 2)

The toilet tissue 10 also includes an intermediate planar shaped absorbent member, generally designated, by the numeral, 18 having a plurality of spaced aligned openings 20

formed therein (Fig. 2). The intermediate planar shaped absorbent member 18, may be, for example a paper mesh like material. (claim 3) The intermediate planar shaped absorbent member 18 has formed on an upper surface thereof a dry antibacterial member 22 (Fig. 3). (claim 4) The antibacterial member 22 is activated by moisture from the body or other source of available moisture. (claim 5) The antibacterial member 22, may be made, for example, of an antibacterial agent such as for example, BetadineTM or an antibacterial soap. (claim 5 and 6) The intermediate planar shaped absorbent member 18 is aligned with the upper planar shaped absorbent member 12 so that the antibacterial member 22 is sandwiched between the upper planar absorbent member and the intermediate planar shaped absorbent member.

The tissue 10 is also provided with a lower planar shaped absorbent member, generally designated, by the numeral, 24. The lower planar shaped absorbent member 24 is provided with a second absorbent member 26. The second absorbent member 26 is adjacently aligned with and coupled to a lower surface of the intermediate planar shaped absorbent member 18. The second absorbent member 26, can each be made, for example, of a thin one ply paper like absorbent member as is the first absorbent member 14. The members 12, 18, 22 and 24 are coupled together in a well known manner.

Figures 4 and 5 illustrate independent claim 7 and dependent claims 8 through 12 which depend from independent claim 7. The claims are described on page 5 of the specification, starting on line 16 through page 6, line 23.

Referring to Figures 4 and 5, and starting on page 5, line 15 of the specification there is shown, an antibacterial toilet tissue, generally designated, by the numeral, 30. The tissue 30 includes an upper planar shaped absorbent member, generally designated, by the numeral 32 (Fig 4). The upper planar shaped absorbent member 32 includes a first absorbent member 34. The first

absorbent member 34, can each be made, for example, of a thin one ply paper like absorbent material which will let liquid substances flow therethrough.(claim 8)

The toilet tissue 30 also includes a lower planar shaped absorbent member, generally designated, by the numeral, 38 having a plurality of spaced aligned openings 40 formed therein (Fig. 6). The lower planar shaped absorbent member 38, may be, for example a paper mesh like material. (claim 9) The lower planar shaped absorbent member 38 has formed on an upper surface thereof a dry antibacterial member 42 (Fig. 6). The antibacterial member 42 is activated by moisture from the body or other source of available moisture. (claim 10) The antibacterial member 42, may be made, for example, of an antibacterial agent such as, for example, BetadineTM or an antibacterial soap. Claim 11 and 12) The lower planar shaped absorbent member 38 is aligned with the upper planar shaped member 32 so that the antibacterial member 42 is sandwiched between the upper planar shaped absorbent member and the lower planar shaped absorbent member. The members 32, 38 and 42 are coupled together in a well known manner.

GROUNDS OF REJECTIONS TO BE REVIEWED ON APPEAL

Claims 1 through 12 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 6,280,757 issued to David M. McAtee et al.

Ground of Rejection

Rejection 1.

Whether Claims 1 through 6 are unpatentable under 35 U.S.C. 103 in view of U.S. Patent 6,280,757 issued to David M. McAtee.

Rejection 2.

Whether Claims 7 through 12 are unpatentable under 35 U.S.C. 103 in view of U.S. Patent 6,280,757 issued to David M. McAtee.

ARGUMEMTS

Argument on Rejection 1.

Rejection 1 Restated.

Whether Claims 1 through 6 are unpatentable under 35 U.S.C. 103 in view of U.S. Patent 6,280,757 issued to David M. McAtee.

“Claim 1”

The McAtee patent discloses a disposable personal cleansing article useful for cleansing, and optionally conditioning the skin or hair. The cleansing article of this invention includes a two-ply substrate wherein one or both plies are apertured. At least one of the plies of the article is wet extensible and the other ply is less wet extensible. The articles are substantially dry prior to use and contain one or more water soluble and water insoluble conditioning agents in addition to a lathering agent. The articles are used by the consumer by wetting the article, which may be dry, with water and thereafter forming a lather by rubbing the article against itself and/or against the skin or hair.

There is no teaching in the McAtee patent of an upper planar shaped absorbent member as taught in Applicant's Claim 1. There is also no teaching or suggestion in the McAtee patent of an intermediate planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member. Additionally there is no teaching or suggestion in the McAtee patent of an antibacterial member being formed on an upper surface of the intermediate planar shaped absorbent member between the upper planar shaped absorbent member and the intermediate planar shaped absorbent member. Still further there is no teaching or suggestion in the McAtee patent of a lower planar shaped absorbent member which is coupled to a lower surface of the intermediate planar shaped absorbent member as taught in Applicant's

claim. Rather the McAtee patent discloses a two-ply article with one ply being wet extensible and the other ply being less wet extensible.

The Examiner contends that the McAtee patent discloses two outer layers, which maybe made of paper fibers and an internal patterned adhesive layer with a cleaning substance in the patterned adhesive. The Examiner also contends that more than two plies may also be used with any or all of the plies being apertured. This is not the case. The McAtee patent discloses that when two or more layers are formed they are used to form the water insoluble substrate. The apertures do not protrude completely through the surface as taught in Applicant's claim. The Examiner also contends that there is an upper member that is substantially planar and cites figure 5A. There is no substantially planar upper member in figure 5A. It is respectfully submitted that the Examiner's position can only be maintained through hindsight after having the benefit of the teachings of Applicant's invention.

Clearly Applicant's Claim 1 is distinguishable over the McAtee Patent.

"Claim 2"

Claims 2 which depends from claim 1 is distinguishable over the McAtee patent for the same reasons as set forth in Claim 1. Additionally claim 2 is further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the upper planar shaped absorbent member including a thin one ply paper absorbent material.

"Claim 3"

Claim 3 which depends from claims 1 and 2 is distinguishable over McAtee for the same reasons as set forth in claims 1 and 2.

Claim 3 is also further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the intermediate planar shaped

absorbent member includes a thin one ply paper material having a plurality of openings formed therein as taught by Applicant.

“Claim 4”

Claim 4 which depends from claims 1, 2 and 3 is distinguishable over McAtee for the same reasons as set forth in claims 1,2 and 3.

Still further claim 4 is distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the antibacterial member having a dry antibacterial member.

“Claim 5”

Claim 5 which depends from claims 1, 2, 3, and 4 is distinguishable over McAtee for the same reasons as set forth in claims 1, 2, 3 and 4.

“Claim 6”

Claim 6 which depends from claims 1, 2, 3, 4 and 5 is distinguishable over McAtee for the same reasons as set forth in claims 1, 2, 3, 4 and 5.

Arguments on Rejection 2.

Rejection 2 Restated.

Whether Claims 7 through 12 are unpatentable under 35 U.S.C. 103 in view of U.S. Patent 6,280,757 issued to David M. McAtee.

“Claim 7”

The McAtee patent discloses a disposable personal cleansing article useful for cleansing, and optionally conditioning the skin or hair. The cleansing article of this invention includes a two-ply substrate wherein one or both plies are apertured. At least one of the plies of the article is wet extensible and the other ply is less wet extensible. The articles are substantially dry prior to use and contain one or more water soluble and water insoluble conditioning agents in addition to a lathering agent. The articles are used by the consumer by wetting the article, which may be dry, with water and thereafter forming a lather by rubbing the article against itself and/or against the skin or hair.

There is no teaching in the McAtee patent of an upper planar shaped absorbent member as taught in Applicant's Claim 7. There is also no teaching or suggestion in the McAtee patent of a lower planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member as taught in Applicant's Claim 7. There is also no teaching or suggestion in the McAtee patent of an antibacterial member formed on an upper surface of the lower planar shaped absorbent member and the lower planar shaped absorbent member as taught by Applicant. Rather the McAtee patent discloses a two-ply article with one ply being wet extensible and the other ply being less wet extensible.

Clearly Applicant's Claim 7 is distinguishable over the McAtee Patent.

“Claim 8”

Claim 8 which depends from claim 7 is distinguishable over McAtee for the same reasons as set forth in claims 7. Additionally claim 8 is distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the upper planar shaped absorbent member including a thin one ply paper absorbent material.

“Claim 9”

Claim 9 which depends from claims 7 and 8 is distinguishable over McAtee for the same reasons as set forth in claims 7 and 8.

Claim 9 is also further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the intermediate planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein as taught by Applicant.

“Claim 10”

Claim 10 which depends from claims 7, 8, and 9 is distinguishable over McAtee for the same reasons as set forth in claims 7, 8 and 9.

Still further claim 10 is distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of the antibacterial member having a dry antibacterial member which is activated by moisture from the body as in Applicant's Claim 10. Instead the McAtee patent discloses a soap and lathering agent that is activated by wetting the article and rubbing the article against itself.

“Claim 11”

Claim 11 which depends from claims 7, 8, 9 and 10 is distinguishable over McAtee for the same reasons as set forth in claims 7, 8, 9 and 10.

Claim 11 is further distinguishable over the McAtee patent because there is no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the antibacterial member includes a layer of antibacterial soap.

“Claim 12”

Claim 12 which depends from claims 7, 8, 9, 10 and 11 is distinguishable over McAtee for the same reasons as set forth in claims 7, 8, 9, 10 and 11.

There is also no teaching or suggestion in the McAtee patent of an antibacterial tissue wherein the antibacterial member includes a layer of antibacterial agent as taught in Applicant's claim 12.

The Examiner contends that the cleansing substance can be added onto or impregnated into any or all of the surfaces of the different layers, either before or after they are joined. This still would not teach or suggest Applicant's invention.

The Examiner also contends that the lather layer of the McAtee patent can be considered as an antibacterial agent, as are all soaps since the function is to remove bacteria. This is not the case. All soaps are not considered as antibacterial agents. However, this still would not teach Applicant's invention. The McAtee patent discloses a two-ply disposable cleansing article with a lathering agent and an optional conditional agent for cleansing the skin or hair. This is a totally different structure and concept than that of Applicant's invention.

CLAIMS APPENDIX

1. (Original) An antibacterial tissue including:

an upper planar shaped absorbent member;

an intermediate planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member;

an antibacterial member formed on an upper surface of the intermediate planar shaped absorbent member between the upper planar shaped absorbent member and the intermediate planar shaped absorbent member; and

a lower planar shaped absorbent member coupled to a lower surface of the intermediate planar shaped absorbent member.

2. (Amended) An antibacterial tissue as defined in claim 1 wherein the upper planar shaped absorbent member includes a thin one ply paper absorbent material.

3. (Amended) An antibacterial tissue as defined in claim 2 wherein the intermediate planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein.

4. (Amended) An antibacterial tissue as defined in Claim 3 wherein the antibacterial member is a dry antibacterial member which is activated by moisture from the body.

5. (Original) An antibacterial tissue as defined in Claim 4 wherein the antibacterial member includes a layer of antibacterial soap.

6. (Amended) An antibacterial tissue as defined in Claim 4 wherein the antibacterial member includes a layer of antibacterial agent.
7. (Original) An antibacterial tissue including: an upper planar shaped absorbent member; a lower planar shaped absorbent member having a plurality of apertures formed therein coupled to the upper planar shaped absorbent member; and an antibacterial member formed on an upper surface of the lower planar shaped absorbent member between the upper planar shaped absorbent member and the lower planar shaped absorbent member.
8. (Amended) An antibacterial tissue as defined in claim 7 wherein the upper planar shaped absorbent member includes a thin one ply paper absorbent material.
9. (Amended) An antibacterial tissue as defined in claim 8 wherein the lower planar shaped absorbent member includes a thin one ply paper material having a plurality of openings formed therein.
10. (Amended) An antibacterial tissue as defined in Claim 9 wherein the antibacterial member is a dry antibacterial member which is activated by moisture from the body.
11. (Original) An antibacterial tissue as defined in Claim 10 wherein the antibacterial member includes a layer of antibacterial soap.
12. (Amended) An antibacterial tissue as defined in Claim 10 wherein the antibacterial member includes a layer of antibacterial agent.

EVIDENCE APPENDIX

NONE

RELATED PROCEEDINGS APPENDIX

NONE

CONCLUSION

Clearly as stated in the previous arguments, the McAtee Patent does not teach or suggest Applicant's invention. Applicant's claims are distinguishable over the this invention. For these reasons it is submitted that the Applicant's claims should be allowed and this application should be allowed.


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